

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LATOYA PORTER-SUMMEY,

Plaintiff,

v.

Case Number 03-10050-BC
Honorable David M. Lawson

UNITED STATES DEPARTMENT
OF THE ARMY, HONORABLE
THOMAS E. WHITE, Secretary,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE, DENYING DEFENDANTS' MOTION TO DISMISS
WITHOUT PREJUDICE, AND SETTING DEADLINE FOR FILING MOTIONS**

This matter is before the Court on the defendants' motion to dismiss. On July 28, 2006, Magistrate Judge Charles E. Binder, operating under an order of reference, issued a report recommending that the Court deny the defendants' motion without prejudice and permit the parties to file any motions they deem appropriate within sixty days of the report's date. Although the magistrate judge's report stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, the parties did not file any objections. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt # 20] is **ADOPTED** and the defendants' motion to dismiss [dkt # 10] is **DISMISSED** without

prejudice.

It is further **ORDERED** that parties may file appropriate motions in accordance with the magistrate judge's report and recommendation on or before **July 28, 2006**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: July 20, 2006

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July, 2006.

s/Tracy A. Jacobs
TRACY A. JACOBS